IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4842 of 2003
With
SPECIAL CIVIL APPLICATION No. 4843 of 2003
With
SPECIAL CIVIL APPLICATION No. 5928 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMILABEN S. PATEL - Petitioner
Versus
STATE OF GUJARAT & 3 - Respondents

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Appearance :
MR MM PRAJAPATI for Petitioner in all the petitions:
MR. KRUNAL D PANDYA, LD. AGP IN SCA NO. 4842 and 4843 of 2003; and
MR. HEMANT K. MAKWANA, LD. AGP FOR SCA NO. 5928 OF 2003 FOR Respondents : 1 - 4.
RULE SERVED for Respondents : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 05/12/2007

COMMON ORAL JUDGMENT:

1. These three petitions have been listed together as the common challenge to the order of recovery of an amount paid to the petitioners pursuant to their pay fixation is involved and, therefore, they were heard together and disposed of by the present common judgment & order.

2. The petitioners in these petitions under Article 226 of the Constitution of India have challenged the action of recovering an amount paid to them under the Revision of Pay known as Gujarat Civil Services (Revision Of Pay) Rules 1987, promulgated under exercise of power under Section 309 of the Constitution of India dated 20/3/1991. The petitioners originally were recruited as Lady Demonstrators in the respondents i.e. the office of the Director of Agriculture. The State of Gujarat under the provision of the Gujarat Civil Services (Revision of Pay) (Amendment) Rules 1991 amended the Gujarat Civil Services (Revision of Pay) Rule 1987 where under pay to the post of Lady Demonstrator which has hitherto Rs.350=00 fixed was ordered to be revised to that of Rs.950-1500, that is the scale admissible to the post of Clerk and it was decided that the existing incumbents were to be absorbed in the vacant posts of clerks in the department and thereafter the posts be abolished. Accordingly the State of Gujarat issued letters on 11/4/1991; 1/8/1991 and 5/9/1991 to the Director concerned for

revising the scale of the petitioners – Lady Demonstrators in light of the provision of the amended Pay Rules of 1991 and undertake the exercise of absorbing them in the cadre of clerk. Accordingly the petitioners were accorded revised pay scale of Rs.950-1500, but as the revision was effected from the original date effected which was given to 1987 Rules, the petitioners were also given benefit of revision of pay scale from 1/1/1986; though the petitioners were absorbed as Clerks somewhere in the year 1996. The respondents therefore issued necessary orders for effecting recovery on the ground that the petitioners were not entitled to receive the benefit of revision of scale from 1/1/1986 and they were entitled only from the date they were actually absorbed as clerk. On that basis the orders of recovery were made and in fact the communication dated 5/8/2002 came to be issued for effecting recovery. Said communication dated 5/8/2002 is impugned in all these petitions before this Court under Article 226 of the Constitution of India.

3. Shri. Prajapati, learned advocate for the petitioners in all the petitions submitted that the order of recovery is made without hearing the petitioners and without appreciating the fact that the amendment in Pay Revision Rules 1991 itself stipulated the revision of the pay scale of Lady Demonstrators and fixation of

their pay in the scale of Rs.950-1500. Therefore the order of recovery is not in accordance with the amendment in pay revision and therefore the order of recovery deserves to be quashed and set aside. Shri. Prajapati has in alternative submitted that the amendment of Pay Revision promulgated under Notification dated 20/3/1991 does not stipulate any condition for absorption as it is sought to be interpolated or insisted upon later on by the respondents, and therefore, in view of this unequivocal provision of amendment of Pay Revision Rules the petitioners ought not to have been subjected to any recovery as ordered to be effected, and therefore, on this ground also the petitions are deserved to be allowed.

4. This Court [Coram: A.L. Dave,J] vide order dated 10/2/2004 issued Rule and granted interim relief. On earlier occasion ad-interim relief had been granted against the recovery which was confirmed by this Court and the same is continued till date.

5. Learned AGPs for the respondents State have submitted that revision of the Pay Scale so far as present petitioners are concerned even as per the amended Pay Revision Rule of 1991 could not have been made with effect from 1/1/1986 as it is clear from this very Amended Rules that the benefit of revision to the employees like Lady

Demonstrators is not to be given from 1/1/1986, i.e. the date on which the 1986 Rules were given effect to and it was linked up with actual date of absorption only. The benefit of pay revised from 1/1/1986 granted to the petitioners were therefore wrongly granted and the same deserves to be recovered. Learned counsels for the respondents have relied upon the decision of this Court in case of DHIRAJLAL ZAVERDAS PARMAR Vs. MANAGIG DIRECTOR AND ORS, reported in 2007 (2) G.L.H., 466, and submitted that when the pay fixation itself is wrongly made the respondents are not under an obligation to afford an opportunity of being heard to the petitioners. Shri. Makwana, learned AGP drew attention of the Court to a communication wherein reference is made to the representation of the petitioners and submitted that, in view of this it can well be said that the principles of natural justice have not been violated and it is submitted that the petitions therefore deserved to be dismissed.

6. This Court has heard learned counsels for the parties and perused the record. The fact remains to be noted that the petitioners were at the relevant time working as Lady Demonstrators and by specific provision made in the amended Pay Revision Rules 1991 they were to be given the pay scale of Rs.950-1500 and the post of Lady Demonstrators were required to be abolished. The

communication dated 11/4/1991; 1/8/1991 and 5/9/1991 originating from the State of Gujarat unequivocally go to show that the respondents State in fact ordered fixation of pay scale of the petitioners as per the revised scale and the factom of absorption was to be undertaken. In view of this, it can at least well be said that the petitioners were in fact entitled for getting benefit of revision of pay scale.

7. A question arises as to whether they were entitled to receive the benefit of revised pay scale from the date of their absorption or from the date of notice or from 1986 as it is in fact given to them. The counsels for the State have fairly admitted under the instructions that none of the petitioners had ever been served with any notice calling upon them to show cause as to why the recovery may not be effected nor have they been informed by the respondents that the pay scale and the revision given to them w.e.f. 1/1/1986 was wrongly given and it was required to be withdrawn and recovery was required to be effected.

8. These three petitions are deserved to be allowed only on this short question that non-issuing of notice informing the petitioners about recovery and non-withdrawing of the order where under their pay fixation was actually effected would amount to violating principles of natural

justice or not. The answer is obvious. The decision of this Court in case of Dhirajlal Zaverdas Parmar (supra) would be of no avail to the respondents in as much as in the said decision also it is nowhere laid down that in such a situation the principles of natural justice is not required to be complied with. On the contrary the observations made in para-10 of the judgment would rather go to show that in such a case the recovery itself is not to be effected. However as these three petitions are being disposed of only on the limited ground of non-observation of principles of natural justice this Court is restraining itself from pronouncing upon the legality of recovery from the petitioners on the ground of their eligibility. In the result, the petitions are deserved to be allowed partly. Accordingly the petitions are partly allowed. The order impugned effecting recovery dated 5/8/2002 is hereby quashed and set aside. As this Court is not pronouncing upon the entitlement of the petitioners to receive the revision of Pay Scale from a particular date, it would be open to the respondents to issue notice calling upon the petitioners as to in what circumstances they were not entitled to receive the pay revision which they have already received, and by which provision of law the recovery is sought to be effected. Thus after issuing show cause notice to the petitioner in each petitions and after

affording them full opportunity of hearing, appropriate order be passed. It goes without saying that, if the orders are adverse to the petitioners, they have all the liberty to move the appropriate forum for appropriate relief. Rule in each petition is made absolute to the aforesaid extent only. Registry to maintain copy of this order in each of the petitions.

[S.R. BRAHMBHATT, J]

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